U.S. Department of Labor

Office of Administrative Law Judges
Seven Parkway Center - Room 290
Pittsburgh, PA 15220

(412) 644-5754
(412) 644-5005 (FAX)

DATE ISSUED:

CASE NO.: 1998-LHC-755

OWCP NO.: 18-66050

In the Matter of:

LAWRENCE S. HOWE,
Claimant

v.

NOVA GROUP INC.,
Employer

and

LIBERTY MUTUAL INSURANCE COMPANY,
Carrier

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

This case involves a claim arising under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 et seq (hereinafter, the "Longshore Act"). The above-captioned case is scheduled for a formal hearing on Thursday, August 26, 1999 at 9:00 a.m. in Long Beach, California. A motion for summary decision was made in this claim in January, 1999 and was denied by Administrative Law Judge David W. DiNardi on February 1, 1999. Judge DiNardi determined that summary decision, predicated upon a theory of collateral estoppel, was inappropriate at that time because there had been no final judgment rendered in the Claimant's state workers' compensation action, thereby making the imposition of collateral estoppel inappropriate at that time. By motion, received in this office on July 19, 1999, Respondents, Nova Group Inc. and Liberty Mutual Insurance Co., renewed their motion for summary decision.

Issues

1. Whether the Claimant is collaterally estopped from litigating his claim under the Longshore Act by the decision in favor of the Respondents issued by the California Workers' Compensation Board.

2. If Claimant is collaterally estopped from litigating his claim under the Longshore Act, whether Respondents are thereby entitled to summary decision.

Findings of Fact and Conclusions of Law [1]

Collateral Estoppel

The application of the doctrine of collateral estoppel has the effect of precluding a party from litigating an issue that has been previously decided against that party in a prior proceeding. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979). The doctrine of collateral estoppel states that "once a judicial entity has decided an issue of fact or law which is necessary to its judgment, that decision can often preclude litigation of the same issue in a subsequent law suit between the same parties." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Accordingly, the factual findings of a State Workers' Compensation Board, acting in a judicial capacity, may have a preclusive effect in cases under the Act. *Barlow v. Western Asbestos Company*, 20 BRBS 179 (1988).

Collateral estoppel can only be given effect if the "legal standards in the two forums are the same or if the burden of proof in the forum where the original claim was heard is more stringent than the jurisdiction where the subsequent claim has been filed." *Manen v. Exxon Corp.*, 1995-LHC-2521 (Office of Administrative Law Judges, Dept. of Labor 1997) *citing Young & Co. v. Shea*, 397 F.2d 185 (5th Cir. 1968). The application of collateral estoppel is precluded where there is substantial variance between the burdens of proof required in the two separate proceedings for the same injury. *Newport News Shipbuilding & Dry Dock v. Director, OWCP*, 583 F.2d 1273 (4th Cir. 1978). Collateral estoppel applies to those issues before an administrative agency, acting in a judicial capacity, which the parties have had an adequate opportunity to litigate. *U.S. v. Utah Construction & Mining Co.*, 384 U.S. 394 (1966).

[1] Pursuant to 29 C.F.R. § 18.41(2), a summary decision shall include a statement of findings of fact and conclusions of law on all issues presented.

When a federal tribunal is determining the preclusive effect of a state court or agency decision, the federal tribunal must follow the collateral estoppel rules of the state where the prior decision was made. *Marerese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985). *See also* 28 U.S.C. §1738. [2]

The State of California requires that the following three requirements be met in order for the doctrine of collateral estoppel to apply:

> (1) the issue decided in the prior adjudication was identical to the one presented in the subsequent action;
>
> (2) the party against whom the doctrine is asserted was a party or in privity with a party to the earlier action; and
>
> (3) the issue was actually litigated and finally decided in the earlier action.

Rymer v. Hagler, 211 Cal. App.3d 1171 at 1179, 260 Cal Rptr. 76 at 80 (Cal. App. 5th Dist. 1989).

The Respondents argue that Judge DiNardi denied the original motion for summary decision because the Claimant's state workers' compensation claim had not reached a final disposition. Since that time the California Workers' Compensation Appeals Board denied Claimant's Motion for Reconsideration. Claimant then filed an appeal with the Court of Appeals of the State of California for the Second District, which was also denied. The Claimant has filed no further appeals, and therefore, the Respondents argue that imposition of the doctrine of collateral estoppel should preclude the Claimant from arguing before this court the same issue that was litigated and finally decided in the Claimant's state workers' compensation claim.

In response, the Claimant argues that collateral estoppel does not apply in the Claimant's action under the Longshore Act. The crux of the Claimant's argument is that the imposition of collateral estoppel in this action is inappropriate because the Claimant's burden of proof under the Longshore Act is lighter than the burden of proof in the Claimant's state workers' compensation claim. Therefore, the Claimant argues, the doctrine of collateral estoppel does not apply to the issue of causation.

Taking into consideration the arguments of both parties on the issue of causation, it is apparent that all three elements necessary for the imposition of collateral estoppel have been met. It is clear that the issue in this action is identical to the issue before the state workers' compensation board. The record shows that the California State Workers' Compensation

---

[2] "[A]cts, records and judicial proceedings ..., shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such state, Territory or Possession form which they are taken." 28 U.S.C. § 1738.

Appeals Board issued a decision on December 22, 1998 stating that the Claimant had not carried the burden of showing that his injury arose out of and in the course of his employment. The applicable California statutes dictate that the burden of proof on causation was no less in the state action than the burden of proof in this action.

The California Labor Code outlines that a Claimant must first establish that the injury arose out of and in the course of the employment. Cal. Lab. Code § 3600 (West 1998). The Claimant must meet the evidentiary burden of proof by a preponderance of the evidence. [3]

In applying the Longshore Act, the United States Supreme Court has determined that the burden of proof provision of the Administrative Procedures Act (APA) applies to the Longshore Act, requiring that "when the evidence is equally balanced, the [] Claimant must lose." *Director, OWCP v. Greenwich Collieries,* 512 U.S. 267 (1994). The application of the APA to the Longshore Act has the effect of ultimately requiring the Claimant to carry the "burden of persuasion on the issue of employment-relatedness by a preponderance of the evidence, even if the [Respondent] fails to rebut the § 920 (a) presumption. [4] *Valenzuela v. Director, OWCP,* 142 F.3d 447; 1998 WL 205799. [5]

The second prong of California's test for the application of collateral estoppel is also met in this action. The Claimant was a party to the prior action, as all the parties involved in this claim are the same as those involved in the claim at the state level. Lastly, the issue of whether the Claimant's injury arose out of and in the course of his employment was litigated and finally determined at the state level. The Claimant presented evidence at a hearing before the state compensation board, as well as testifying on his own behalf.

When the prior motion for summary decision was reviewed by Judge DiNardi, the state action was not finalized, as the Claimant chose to appeal the decision of the state workers' compensation board. However, since that time, the action before the state workers' compensation board has ended. Accordingly, I find that the Claimant is barred from relitigating the causation issue before this court under the doctrine of collateral estoppel. Therefore, it has been established, and I find that the Claimant's injury did not arise out of his employment, nor did

---

[3] Preponderance of the evidence is defined as meaning "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." Cal. Lab. Code § 3202.5 (West 1998).

[4] Section 920(a) of the Longshore Act creates a rebuttable presumption that the claim comes within the provisions of the Longshore Act. 33 U.S.C. § 920(a).

[5] *Valenzuela* is a recent unpublished decision by the Ninth Circuit Court of Appeals. Ninth Circuit Rule 36-3 states that unpublished decisions are not precedential and should not be cited. However, I find that while this opinion is not controlling on the issue at hand, it is persuasive as to the position of the Ninth Circuit.

it occur in the course of his employment.

Summary Decision

The purpose of summary decision is to promptly dispose of actions in which there is no genuine issue as to any material fact. [6] *Green v. Ingalls Shipbuilding, Inc.*, 29 BRBS 81 (1995). An Administrative Law Judge may grant a summary decision for either party if the pleadings, affidavits, materials obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to a judgment as a matter of law. 29 C.F.R. § 18.40(d). A fact is material and precludes a grant of summary decision if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or a defense asserted by the parties. *Matsushita Elec. Indues. Co. Ltd. v. Zenith*, 475 U.S. 574 (1986). Furthermore, the fact must necessarily affect application of appropriate principles of law to the rights and obligations of the parties. *Id.* If no issues are present, the moving party is entitled to a judgment as a matter of law. If the slightest doubt remains as to the facts, the motion must be denied.

The burden of proof in a motion for summary decision is borne by the party bringing the motion Because the burden is on the movant, the evidence presented is construed in favor of the party opposing the motion who is given the benefit of all favorable inferences that can be drawn from it. Nevertheless, when the moving party has carried the burden under Section 56(c) of the Federal Rules of Civil Procedure, its opponent must do more than simply show there is some metaphysical doubt as to the material facts. [7] *Id.* at 574. Thus, a non-moving party "may not rest upon mere allegations or denials in his pleadings, [as the Claimant has done here] but must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby*, 447 U.S. 242 (1986).

Viewing the evidence in a light most favorable to the Claimant, I find that summary judgment is appropriate in this action. The proper application of the doctrine of collateral estoppel precludes the Claimant from relitigating the issue of causation before this court. Therefore, there is no genuine issue of material fact remaining for determination in this claim as there are no remaining factual issues present, that if proven or refuted would constitute an essential element of the claim. Accordingly, the Respondents are entitled to a decision as a matter of law.

---

[6] For purposes of proceedings under the Act, a motion for summary decision is akin to a motion for summary judgment. Administrative law judges issue decisions as opposed to judgments. In general, no distinction between the two terms is made.

[7] Section 56(c) of the Federal Rules of Civil Procedure states that judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show, that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

ORDER

The Respondents' motion for summary decision is GRANTED. The claim for relief under the Longshore and Harbor Workers' Compensation Act is DISMISSED. The hearing presently scheduled for August 26, 1999 in Long Beach, California is canceled.

RICHARD A. MORGAN
Administrative Law Judge

RAM/jem

DATED: AUGUST 4, 1999

Pittsburgh, PA